IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.901 OF 2004

IN

SUMMARY SUIT NO.3397 OF 2002

Mrs Daksha Dinesh Kamdar .. Plaintiff

versus

Ahmed Abdul Gani Bhatti .. Defendant

...

Mr. K.H.Modi i/b D.Mehta for Plaintiff.

Ms.Mamta Shah i/b Zohair & Co for Defendant.

CORAM : D.G. KARNIK, J

DATED : 23rd February, 2005.

P.C:-

1. Heard learned counsel for the parties. The plaintiff lent and advanced to the defendant a sum of Rs.3,00,000/- for repayment of which the defendant executed promissory note on 1st August, 1995. The defendant paid interest up to March, 1999 but thereafter failed and neglected to pay the interest. The plaintiff therefore by advocate’s notice dated

13th January, 2001 demanded payment. By a reply dated 23rd November, 2001 the defendant pleaded financial crunch and prayed for three months time for making the payment. Even thereafter the defendant failed and neglected to make the payment. Hence the plaintiff has filed this suit.

2. By filing an affidavit in reply, the defendant has contested the claim. In the affidavit in reply the defendant has admitted receipt of the loan of Rs.3,00,000/-. The defendant has also not denied the payment of interest upto 1999 as alleged by the plaintiff. The only defence that is raised is that the suit is barred by limitation. The defendant has written to the plaintiff a letter dated 23rd November, 2001 which constitutes a promise to pay the amount within the meaning of section 25 of the Contract Act. Even thereafter the defendant has written another letter to the plaintiff admitting the liability and has further issued a cheque of Rs.3,00,000/- dated 30th November, 2003. Copy of the letter and the cheque are annexed to the affidavit in rejoinder dated 21st February, 2005. In view of the clear admission of having taken the loan and in clear and unequivocal promise to repay the loan made before and after the

suit and issuance of a cheque after the suit the defence of limitation has no merit.

3. For these reasons the Summons for Judgment is made absolute and suit of the plaintiff is decreed as follows :

> " The defendant shall pay to the plaintiff sum of Rs.4,57,000/- together with interest thereon at 9 % p.a. from the date of the suit till payment and all costs of the suit."

D.G.KARNIK, J